

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

DARRYL JAYVONN LEE,

v.

NATHANIEL QUARTERMAN.

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C.A. NO. C-07-476

**ORDER DENYING MOTION FOR AN EVIDENTIARY HEARING**

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Clements Unit in Amarillo, Texas. Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 28).


Rule 8(a) of the Rules Governing Section 2254 Cases states that "[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." Rule 8(c) further requires that "[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare." The Fifth Circuit has explained that "[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute." Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815-16 (5th Cir. 2000) (discussing basis for evidentiary hearing).

Petitioner is challenging his conviction for simple assault on a public servant by the 156th Judicial District Court in Bee County, Texas. (D.E. 1, at 2). In the pending motion, he argues for an evidentiary hearing because the state trial court did not properly address the merits

of his claims at his state hearing. (D.E. 28, at 3). Respondent has filed a motion for summary judgment. (D.E. 25). Petitioner received an extension of time until July 3, 2008 to respond to this summary judgment motion. (D.E. 29). If an evidentiary hearing is determined to be necessary, then one will be set.

Accordingly, it is ORDERED that petitioner's motion for an evidentiary hearing, (D.E. 28), be DENIED without prejudice.

ORDERED this 4th day of June 2008.



BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE